Supreme Court, U.S.
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No. 10-_____

IN THE

Supreme Court of the United States

Rev. Dr. Willie Gerald Newsom, T.H.D., D.D.,

Petitioner,

v.

The United States, United States Justice Department, The State of Tennessee, State of Tennessee Department of Human Services, ET AL.

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Rev. Dr. Willie G. Newsom
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(731) 285-7010

Pro Se Counsel for Petitioner

QUESTIONS PRESENTED

1. Is U.S. Code 28 § 1872 a constitutionally valid federal statutory law that requires the U.S. Supreme Court to allow a Petitioner to have his or her issues of fact examined by a Trial by Jury before the U.S. Supreme Court?

2. Is U.S. Code 18 Chapter 13 § 242 a constitutionally valid law that prohibits a judge from roadblocking a citizen's right to Due Process of Law and a demanded right to a Trial by Jury?

3. Can any citizen of the United States be stripped of his or her citizenship rights without Due Process of Law guaranteed by the 14th Amendment?

4. Can a citizen of the United States be roadblocked from showing sworn affidavits of witnesses and his or her evidence that prove injuries have occurred before a demanded Trial by Jury?

5. Can the only Durable Power of Attorney and executor of a person's will and estate be totally ignored where proceedings against a ward have been denied Due Process of Law?

6. Can the U.S. Supreme Court name any statutory law that would prevent a citizen's right to have a demanded constitutionally guaranteed right of Trial by Jury?

PARTIES TO THE PROCEEDING

The following individuals and entities are parties in the court below:

Rev. Dr. Willie Gerald Newsom; The United States, United States Justice Department, The State of Tennessee, State of Tennessee Department of Human Services, Marianna Williams, Larry Blakeburn, Kimberly Childress Monteith, Kenny Monteith, Connie Haymon Scott, Telesa Taylor, Joni McGehee, Steve Stafford, Larry Newsom, Julio M. Pagan, Jan Stigall, Dyersburg Manor Nursing Home and Dyersburg State Gazette / Russ Communications Inc.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Rev. Dr. Willie G. Newsom respectfully submits this petition for a writ of certiorari to review the final order of the United States Court of Appeals for the Sixth Circuit that road-blocked this Petitioner's right to Due Process of Law.

OPINION BELOW

The court of appeals' opinion/order dismissed the Petitioner's case without his constitutionally guaranteed right to Due Process of Law. Such makes a total of five courts that habitually road-blocked the Petitioner's constitutionally guaranteed right to a demanded Trial by Jury and Due Process of Law. *United States v. William Wagner*, (99-2481), (6th Cir. 2001) states: "The right to a jury trial is a fundamental right and is not subject to harmless error review. Because the right to a trial by jury is a fundamental constitutional right, a waiver cannot be presumed from a silent record. *United States v. Lee*, 539 F.2d 606, 609 (6th Cir. 1976)(citing *Burnham v. N. Chicago St. Ry. Co.*, 88 F. 627 (7th Cir. 1898)). In fact, "courts indulge every reasonable presumption against waiver of fundamental constitutional rights and require a showing of an intentional relinquishment or abandonment of a known right or privilege." Lee. 539 F.2d at 609-610 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461

(1938))." This makes a total break down of this Petitioner's right to Due Process of Law: And a violation of the Federal Rules of Civil Procedures FRCP Rules 38(a) and 39(a). Due Process of Law would have shown that the Petitioner has filed solid evidence in the justice tracking system that none of the Defendants refuted: that there is wide spread corruption and a coverup of various crimes and injuries that this Petitioner and his Mother have suffered which have never been addressed at any time by any of the five courts: And is being allowed by the indifference of State and Federal officials who refuse to give an accounting of their actions. An examination of the Petitioner's witnesses would have shown his strong position in this case. Reference the case of *United States v. Lanier*, (95-1717), 520 U.S. 259 (1997) – "rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law."

JURISDICTION

A. The Petitioner had authority by the laws of our land to be in the Federal Court System based upon a requirement to be respected of U.S. Code 28 § 1331, that clearly states, that the original jurisdiction for matters involving violations of the United States Constitution is the Federal District Court for the District in which that party victimiz-

ed resides, which is the U.S. District Court for the Western District of Tennessee.

B. The Petitioner is fully in his right to be in the Federal Court System under U.S. Code 28 § 1343, which gives the Petitioner the right to be in the Federal Court System where he feels that the State Court System would not show respect to his rights or would be the wrong jurisdiction to address matters involving the violation of his and his Mother's Constitutional and Civil Rights under the Americans with Disabilities Act of 1990; the Civil Rights Act of 1990 - 1991 and his and his Mother's right to receive monetary damages for those violations that others have received as proven by the case laws the Petitioner has filed with the Court.

C. The Petitioner is fully within his right to be in the Federal Court System for violation of his right of personal safety and that of his Mother, that is a violation of U.S. Code 42, § 3058(i), which is the Prevention of Elder Abuse, Neglect, and Exploitation Law that requires Federal and State officials to make certain that the Petitioner and his Mother as senior citizens are not neglected, abused, exploited, oppressed, or injured in any way. In *State of Tennessee, Petitioner v. George Lane, Et. Al.* No. 02-1667 U.S. 541 (2004) the U.S. Supreme Court ruled against the State of Tennessee for its very bad record of abuse of the rights of the Disabled and Elderly.

D. The Petitioner is fully within his right to be in the Federal Court System under the right guaranteed by U.S. Code 28 § 1443 that clearly states, the Petitioner is within his right to receive monetary damages that he is owed for violations of his Constitutional and Civil Rights and the injuries he has suffered by the actions of the Defendants and the actions that abused his Mother as well. *United States v. Bagley,* 473 U.S. 667, 682 (1985) held: "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different". Such proves that the Defendants are all liable for monetary damages for deliberately suppressing evidence that would have revealed that the Defendants all worked together to neglect and abuse the Petitioner and his Mother.

E. The Petitioner is fully within his right to be in the Federal Court system guaranteed under U.S. Code 42 §§ 1981, 1983 that give him the right to receive monetary damages from Attorney Marianna Williams whose fraud is easily seen by her own words in Exhibit 28 claiming that she was never the Petitioner's or his Mother's attorney and where Exhibits 1-12 expose that she had been one who road blocked their right to a Trial by Jury, and/or the right of a hearing: Where in Exhibit 22 and 28 her fraud is easily revealed by her actions and her own words. Such requires FRCP Rule 11 correction by the Court. *Maine v. Thiboutot*, 448 U.S. 1 (1980) held: "Title 42 U.S.C. § 1983 – which provides that

anyone who, under color of state statute, regulation, or custom deprives another of any rights, privileges, or immunities "secured by the Constitution and laws" shall be liable to the injured party – encompasses claims based on purely statutory violations of federal law, such as respondents' state court claim that petitioners had deprived them of welfare benefits to which they were entitled under the federal Social Security Act. Given that Congress attached no modifiers to the phrase "and laws," the plain language of the statute embraces respondents' claim, and even were the language ambiguous, this Court's earlier decisions, including cases involving Social Security Act claims, explicitly or implicitly suggest that the § 1983 remedy broadly encompasses violations of federal statutory as well as constitutional law. Cf., e.g., *Rosado v. Wyman*, 397 U.S. 397; *Edelman v. Jordan*, 415 U.S. 651; *Monell v. New York City Dept. Of Social Services*, 436 U.S. 658. Pp. 448 U.S. 4-8."

F. The Defendants and the Judges have deceitfully failed to address that this Petitioner himself has suffered social, physical, financial, emotional and irreparable personal injuries caused by the Defendants in violation of the following:

Age Discrimination Act of 1975

Federal Tort Claims Act

Major Fraud Act of 1988

Older Americans Act

Prevention of Elder Abuse, Neglect, and Exploitation Statute 42 U.S.C. § 3058i

Protecting Seniors from Fraud Act of 2000

Rehabilitation Act of 1973

Tennessee Governmental Tort Liability Act

STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. §§ 241, 242
Title 18 U.S.C. § 1001
Title 18 U.S.C. § 1518
Title 28 U.S.C. § 144
Title 28 U.S.C. § 1331
Title 28 U.S.C. § 1343
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Title 28 U.S.C. § 1872
Title 28 U.S.C. § 2111
Title 42 U.S.C. §§ 1981, 1983
Title 42 U.S.C. § 3058(i)

STATEMENT

I. The Local State Attorney General recommended the Petitioner to file his case with the Federal Court in Memphis, TN:

A. The following words were declared by Dyer County, TN Attorney General Phil Bivens to the Petitioner: "Brother Newsom, since Federal Laws and your Constitutional Rights and those of your Mother have been violated in this matter, I highly recommend you, without fail, to file an immediate lawsuit in the Federal Court in Memphis, Tennessee, on behalf of you and your Mother!" In *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 90 A.L.R. 575 (1934), "it was said that Due Process prevents state action which offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

B. The Defendants have continued to refuse to provide proof pertaining to their false charges that they made against the Petitioner and his Mother: And had no justification to remove the Petitioner's Mother against her and the Petitioner's wishes. No citizen of the United States can be stripped of his or her rights without Due Process of Law and without a right of a hearing or by 7th Amendment guaranteed right to Trial by Jury. *Duncan v.*

Louisiana, 391 U.S. 145 (1968) stated: "the right to a trial by jury is a "fundamental constitutional right to the American scheme of justice," and that the states were obligated under the Fourteenth Amendment to provide such trials."
The Judges in the Sixth Circuit have dishonorably covered up such by violation of U.S. Code 18 Chapter 13 § 242: Because of the age of the Petitioner's Mother and the injuries she suffered that the Defendants have never argued about. After the Petitioner filed some newspaper articles that evidently angered Judge Steve Stafford and caused him to want to abuse them: **Clearly he placed his unjustified, one-sided, non-hearing ruling on the Petitioner's birthday of January 5th, 2006, and had another ruling rigged up in a non-hearing, unjustified, one-sided way by a friend of his on the Petitioner's Mother's birthday on May 21st, 2007.** It should be noted: that Judge Steve Stafford at the time was the Chief Judge of the Tennessee Court of Judiciary to whom judicial complaints would be sent and decided. Such proves fraud and malice which gives the Petitioner right to punitive damages. *Screws v. United States,* 325 U.S. 91 (1945) is where the U.S. Supreme Court ruled that federal intervention is required to reverse the oppressive actions of state officials who seek to deny a citizen of his or her right to life, liberty, and the pursuit of happiness and especially of the right to safety and personal well being.

C. The judges at the Sixth Circuit and U.S. District

Court in Memphis, sought to cover up that the Petitioner has been his Mother's only General Durable Power of Attorney since 1997, which none of the Defendants in any of their filings ever argued. Such under Rule 8(d) of the Federal Rules of Civil Procedures (FRCP) is proof that the Petitioner alone, possesses the authority to demand his Mother's immediate return to her own residence as per her own declared stated wishes in Exhibit 34 and per his demand as her only General Durable Power of Attorney: And as her only Executor of her Will as seen in Exhibit 44 and Exhibit 53 filed in the justice tracking system: And as her chosen legal voice for 22 years as well as her only choice of care giver in all that time.

D. The Petitioner complains that Rule 24 of the FRCP was deliberately ignored by the judges that gives him, as his Mother's biological son, the right as her only General Durable Power of Attorney and as her only Executor of her Will to make certain that injuries that happened to his Mother that the Defendants never argued, be compensated fully by this Court as required by the case laws and the laws of our land identified by the Petitioner.

E. The Petitioner complains that the judges of the Sixth Circuit and elsewhere, did in fact, ignore that Federal Judge Samuel Mays was required by U.S. Code 28 § 144 that the Petitioner invoked to recuse himself for his shown prejudice and bias in this

case;[1] and yet, he defiantly refused to respect that federal statutory law in violation of his oath of office as did Judge Steve Stafford.

F. The judges of the Sixth Circuit and of Memphis, Tennessee and elsewhere, have ignored that every citizen of the United States is required, under the Fourteenth Amendment, to the constitutionally guaranteed right of Due Process of Law, and not to be subjected to the abuse of one-sided rulings that seek with malfeasance to cover up abuses of the Defendants of a case. **Such violates the Petitioner's First Amendment right to have redress of grievances, as a right guaranteed by the U.S. Constitution. That attitude by the Sixth Circuit and elsewhere treats disrespectfully our Constitution as if it is a worthless rag.**

G. The Judges also ignored the signed letter on the stationery of the U.S. Justice Department of Washington, D.C. by the Chief of the Disability Rights Section giving formal permission for the Petitioner to file his complaint immediately with the Federal Court for the District where he resides, which the Petitioner exercised his right to do; he did in fact file: Pertaining to violation of his rights and those of his Mother under the Americans with

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1 He was a legal counsel to the Governor of Tennessee from 1995 to 1997 and was the Chief Budget Officer to the Governor and Chief of Staff for Tennessee from 1997 to 2000.

Disabilities Act of 1990 and the Civil Rights Act of 1990-91 and under the Federal Prevention of Elder, Neglect, Abuse, and Exploitation Law which is U.S. Code 42 § 3058(i), etc.

II. Proof of Collusion that Road-Blocked right to Due Process of Law:

The Petitioner complains that federal statutory law that is known as United States Code Title 18 Chapter 13 § 242 declares that it is a felony offense for any judge to use his/her position to unlawfully roadblock, deny, obstruct, and deprive citizens of the United States of their rights guaranteed by the United States Constitution to a demanded and invoked Trial by Jury and/or hearing.

A. The Petitioner also points out that it is a felony offense for anyone to use his or her position to seek to obstruct justice from being done in total disrespect of the obstruction of justice laws of our land. Such is a violation of U.S. Code 18 Part I Chapter 73 § 1518.

B. Such an attitude demonstrated by judges of the Sixth Circuit and by the Federal Court Judge in Memphis, Tennessee and elsewhere, is a violation of the conspiracy to defraud statute, which is also a felony offense that is known as U.S. Code 18 Chapter 13 § 241.

C. Such is also a violation of the fraud statute, U.S. Code 18 Chapter 47 § 1001 by using one's position to

defraud the Petitioner of the monetary damages that his large numbers of sworn affidavits of witnesses that the judges deliberately never mentioned at any time, clearly show that he has been injured by the identified defendants of this case and has suffered himself personal, social, emotional, and physical, as well as financial injuries by those identified defendants of Sixth Circuit Case 08-6074.

D. Tim Edwards, Attorney for Defendant Marianna Williams, has stated emphatically in his biography that anyone can examine his bragging that he is a personal friend and holds "pull" with judges in high positions of authority at the Sixth Circuit, at the federal judgeship of Memphis, Tennessee, and with the Board of Professional Responsibility of Nashville, Tennessee.

E. The Petitioner complains and certifies that U.S. District Court Clerk Anthony Johnson did in fact state to this Petitioner when he confessed that he had been ordered by the words of Judge Samuel Mays, being passed on through Judge Mays' own assistant to pretend that the Petitioner had not filed papers that clearly the Petitioner had evidence were properly filed in the justice tracking system. Thusly, Judge Mays was violating U.S. Code 18 Chapter 13 §§ 241, 242 and promoting a fraud violating U.S. Code 18 Chapter 47 § 1001, which the judges of the Sixth Circuit have sought to ignore.

F. The Petitioner complains, that the judges of the

Sixth Circuit ignored the fact that Federal Judge Samuel Mays, who served as Chief Budget Officer for the other key Defendant of this case, had been one who had pretended in his final ruling by his unconstitutionally and illegally road-blocking the Petitioner's right to Trial by Jury that Federal law U.S. Code 42 § 3058(i) did not allegedly exist. It is clearly a very binding law upon the Federal Government and the Defendants of this case, because it requires Federal and State Governments not to allow any senior citizen to be neglected, abused, exploited, oppressed, or injured by anyone; yet, the judges of the Sixth Circuit and elsewhere have sought to cover up the requirements of that law!

G. The Petitioner is fully within his right to be in the Federal Court System where his HIPAA rights have been violated as shown by Exhibit 33 front page newspaper article by Defendant Marianna Williams and the Dyersburg State Gazette / Russ Communications. They clearly without his authorization which is required to be respected under the HIPAA of 1996: Committed a felony offense when they disclosed to the public for maximum exposure on the front page of their newspaper which has worldwide Internet access, that he is a bed ridden man; and thusly, they recklessly endangered him. This Petitioner complains that within a few days, police records showed that burglars evidently basing their actions upon the words of that well publicized newspaper article sought to break into the Petitioner's home.

H. The Sixth Circuit is required by law to correct this injustice immediately and to award the Petitioner summary judgment that others have received according to the case laws identified in the Petitioner's "En Banc Appellant Brief" and his "Composite Reply Brief of the Appellant". Failure to award the Petitioner summary judgment is failure by the Sixth Circuit to have consistency in rulings and failure to respect the favorable rulings that the Sixth Circuit gave for similar issues that took place in the following cases: *Anderson v. Liberty Lobby Inc.* 477 U.S. 242, 248 (6th Cir. 1986); *Duchon v. Cajon Co.,* 791 F.2d 43, 46 (6th Cir. 1986); *United States v. Bagley,* 473 U.S. 667, 682 (1985); *Screws v. United States,* 325 U.S. 91 (1945) and more than 42 case laws identified by the Petitioner.

REASONS FOR GRANTING THE PETITION

III. The Motivation behind why the right to Due Process of Law was Road-Blocked:

A. The judges of the Sixth Circuit show themselves totally ignoring:

1. That the attorneys for Dyersburg Manor Nursing Home and the State of Tennessee and Attorneys for Defendants: Marianna Williams and Dyersburg State Gazette /

Russ Communications made numerous filings.

2. Dr. Julio Pagan's attorney is seen clearly in the justice tracking system admitting that his client was formally served the Petitioner's formal complaint. Yet, because the Attorney knew his client was guilty he never at any time argued the charges of the Petitioner.

3. None of the Defendants have argued the issues of this case because they know their guilt is clearly exposed by the Petitioner's large numbers of sworn notarized affidavits of his many witnesses.

4. It is a fact that not one single Defendant of this case has ever filed an exhibit or affidavits of any witnesses.

5. Anderson v. Liberty Lobby Inc. 477 U.S. 242, 248 (6th Cir. 1986); *Duchon v. Cajon Co., 791 F.2d 43, 46 (6th Cir. 1986)* and the U.S. Supreme Court ruled in situations like the Petitioner's that he is immediately entitled by law to summary judgment where the guilt of the Defendants is clearly seen and where the Defendants failed or refused to provide proof of their innocence.

B. The Petitioner complains that eight (8) Defendants are in default by their failure to answer the Petitioner's served complaints. They are as follows: the United States and the United States Justice Department, Defendants Kenny and Kim

Monteith, Larry Blakeburn, Larry Newsom, Dr. Julio Pagan, and Joni McGehee. The Petitioner invoked his right guaranteed under Rule 55 of the FRCF to demand a Default Judgment against them.

C. The Petitioner complains, that the judges of the Sixth Circuit ignored that the United States and U.S. Justice Department are in default:

1. Because the Petitioner has the signed letter on the stationery of the U.S. Attorney for the District where he resides in the Memphis, Tennessee area, admitting that their office was served a formal complaint of the Petitioner, but protesting the Petitioner should have served someone else and that they had been so busy they forgot to answer the complaint.
2. Since the United States and U.S. Justice Department are Defendants in this case and that the U.S. Attorney who was fired shortly thereafter was required on their behalf to answer that complaint within sixty (60) days: Therefore, the United States and U.S. Justice Department are automatically in default under Rule 12 Subpart 3(A) of the FRCP.

D. This Petitioner has supplied proof:

1. That the State of Tennessee has received $ 1.2 Billion in Federal Funding yearly in order to provide for senior citizens and

adults with physical disabilities and where 99 percent of the funding is going to Nursing Homes and only 1 percent was allowed for in-home and community-based services.
2. As reported by the AARP most people prefer to remain in their own homes with proper in-home care.
3. The disparity of spending between the Nursing Homes versus In-Home & Community-Based Services is over whelming.

E. There are state wide violations of the U.S. Supreme Court's decision of *Olmstead v. L.C.*, (98-536) 527 U.S. 581 (1999) which decided that state governments can not force senior citizens and disabled persons against their will into Nursing Homes because of their age and/or disabilities. The State of Tennessee has one of the worse records of the nation and is ranked 47th. Our governor became very wealthy from the Nursing Home industry and is using the power of his office in violation of *Olmstead v. L.C.*, (98-536) 527 U.S. 581 (1999).

F. No State or Federal agency has ever conducted a complete investigation into this matter: Although the Petitioner has plead many times to all to initiate one.

CONCLUSION

A. The Petitioner has shown overwhelming proof in all of his filings found in his "En Banc Appellant Brief" and "Composite Reply Brief of the Appellant" that were submitted to the 6th Circuit that the court completely ignored. Due Process of Law would have proved the strength of the Petitioner's case and would have shown that he is entitled to immediate Summary Judgment.

B. **The abuses suffered by this Petitioner and his mother are shown by the evidence filed to be wide spread throughout the State of Tennessee and may reflect a national problem allowed by the indifference of the U.S. Justice Department towards the plight of the Elderly and Disabled by an out of control situation.**

C. It is a fact that Chief Judge Danny Boggs and U.S. Attorney David Kustoff both were replaced after this Petitioner complained to the U.S. Senate Judiciary Committee. U.S. Congressman Jim Sensenbrenner of Wisconsin and other Congressmen have formally complained that situations like this Petitioner's and his mother's prove that there is an absolute need for the creation by the U.S. Congress of a fully empowered federal judicial watch agency with the full authority to bring criminal charges against any state or federal judge who purposely seeks to deny any citizen of his or her Constitutional and Civil Rights.

D. This Petitioner certifies that he was recently contacted by two federal officials from the U.S.

Government Accountability Office who said that they were ordered by the U.S. Senate Special Committee on Aging to see if the charges made by this Petitioner have validity and declared to this Petitioner the following: "Dr. Newsom, we have just started our investigation and have already found 20 other cases that substantiate your charges."

E. This Petitioner states: "It is the fundamental principle of law that all American courts are required to obey under the Fourteenth Amendment that all citizens are to be considered in all civil and criminal cases innocent until proven guilty by the preponderance of the evidence and have the right to trial by jury to be defended against false charges filed against them."

F. The Petitioner also invokes U.S. Code 28 § 2111 to shield this filing from unjust criticism and harmless errors as he has done in all filings including the U.S. District Court's ordered Amended Complaint.

Respectfully submitted.

Rev. Dr. Willie G. Newsom
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(731) 285-7010

Pro Se Counsel for Petitioner

April 16, 2010

No. 08-6074

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

WILLIE GERALD NEWSOM, Rev. Dr., T.H.D., D.D.,

Plaintiff-Appellant,

v.

STATE OF TENNESSEE, TENNESSEE DEPARTMENT OF HUMAN SERVICES; TENNESSEE MARIANNA WILLIAMS; CONNIE SCOTT; HAYMON; TELESA TAYLOR; DYERSBURG MANOR NURSING HOME; DYERSBURG STATE GAZETTE / RUSS COMMUNICATIONS, INC.,

Defendants-Appellees,

and

LARRY BLAKEBURN; KIMBERLY CHILDRESS MONTEITH; JONI MCGEHEE; JULIO M. PAGAN,

Defendants.

ORDER

(Filed on August 13, 2009)

Before: BOGGS, Chief Judge; COLE and COOK, Circuit Judges.

Willie Gerald Newsom, a Tennessee citizen proceeding pro se, appeals a district court order dismissing his civil rights complaint. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On December 13, 2006, Newsom filed a complaint against the state of Tennessee, the Tennessee Department of Human Services, Marianna Williams, Larry Blakeburn, Kimberly Monteith, Connie Haymon, Telesa Taylor, and Joni McGehee, alleging constitutional and statutory violations in connection with a state court

proceeding in which Monteith was appointed as his mother's conservator. The complaint primarily alleged malpractice on the part of Williams, an attorney whom Newsom claimed failed to properly defend his and his mother's rights during the conservatorship proceedings. The district court ordered Newsom to file an amended complaint, noting several deficiencies in his original complaint, including a failure to state any jurisdictional allegations. In a separate order, the district court denied Newsom's subsequent motions seeking injunctive relief and court-ordered investigations into his mother's care.

Newsom filed an amended complaint, which added as defendants the United States; the United States Justice Department; Kenny Monteith; Steve Stafford, a Dyer County Chancery Court judge; Larry Newsom; Julio Pagan; Jan Stigall; Dyersburg Manor Nursing Home; and Dyersburg State Gazette/Russ Communications, Inc. The amended complaint contained few specific factual contentions, alleging generally that the defendants denied Newsom and his mother due process, recklessly disregarded his mother's well-being, treated them both cruelly and inhumanely, and slandered him.

The district court dismissed all claims purporting to seek relief for injuries to Newsom's mother on the ground that Newsom lacked standing

to sue on her behalf. It also dismissed all claims seeking judicial review of the Dyer County Chancery Court decisions regarding his mother's conservatorship, reasoning that they were barred by the *Rooker-Feldman* doctrine. Finally, the district court concluded that the complaint was subject to dismissal in its entirety because it failed to comply with the court's previous order to amend.

Newsom filed this timely appeal, and he has since filed several other motions and requests for relief. On appeal, Newsom argues that he and his mother were denied due process when he was not appointed her conservator; that she was removed from her home without due process; that it was a violation of the Americans with Disabilities Act not to appoint him as conservator; that the defendants' actions violated the Eighth Amendment prohibition against cruel and unusual punishment; that he is entitled to a default judgment against McGehee, Monteith, Pagan, Blackburn, and Larry Newsom; that the district court should have appointed him counsel; that the district court judge should have recused himself; that he is being denied medical care; that his mother is being neglected, chemically restrained, and falsely imprisoned; that the defendants have slandered him; and that the defendants have committed legal malpractice.

We review de novo a district court's dismissal of a case pursuant to Federal Rule of Civil Procedure

12(b)(6). *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). To survive a motion to dismiss, the factual allegations in a complaint must "raise a right to relief above the speculative level." *Id.* (quoting *Bell Atl. Corp. v. Twombley*, 550 U.S. 544, 555 (2007)). In reviewing a motion to dismiss, the court construes the complaint in the light most favorable to the plaintiff, accepts the factual allegations as true, and draws all reasonable inferences in favor of the plaintiff. *Id.* When considering a motion to dismiss, the court may consider the complaint and any exhibits attached thereto, as well as public records and items appearing in the record to the case that are referred to in the complaint. *Id.*

The gravamen of Newsom's complaint is that he and his mother were denied due process and the right to a jury trial in connection with the state court conservatorship proceedings. Newsom, however, has failed to state a claim under any federal statutory or constitutional provision.

First, the district court correctly held that Newsom lacks standing to bring suit on behalf of his mother for an alleged violation of her constitutional rights. A claim under 42 U.S.C. § 1983 is "entirely personal to the direct victim of the alleged constitutional tort" and cannot be pursued by a third party, regardless of the interrelated nature of the harms suffered. *Barber v. Overton*,

496 F.3d 449, 458 (6th Cir. 2007) (internal quotation marks omitted).

Second, Newsom's allegations of negligence against his attorney may give rise to a legal malpractice claim, but they do not provide a basis for federal subject matter jurisdiction. *See Conley v. Rust*, 15 F. App'x 209, 210 (6th Cir. 2001). A private attorney representing a client, while acting as an officer of the court, does not act under color of state law and thus is not subject to suit under § 1983. *See Otworth v. Vanderploeg*, 61 F. App'x 163, 165 (6th Cir. 2003). Accordingly, to the extent that Newsom seeks to hold Williams liable for alleged violations of his constitutional rights, he has failed to state a claim on which relief can be granted.

Third, to the extent that Newsom seeks to invalidate the state court's conservatorship order, his claims are subject to dismissal under the *Rooker-Feldman* doctrine, which "bars parties that have lost in state court from filing suit in federal district courts for the purpose of obtaining review of the adverse state-court judgments." *Powers v. Hamilton County Public Defender Comm'n*, 501 F.3d 592, 606 (6th Cir. 2007), *cert. denied*, 129 S. Ct. 44 (2008); *see generally Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16 (1923). Further, although Newsom makes

allegations of fraud and other illegal actions by the defendants in connection with the conservatorship proceeding that are not necessarily barred by the *Rooker-Feldman* doctrine, *see McCormick v. Braverman*, 451 F.3d 382, 393-95 (6th Cir. 2006), these allegations are wholly conclusory and do not warrant relief.

Newsom's remaining arguments are without merit. He has failed to state a claim under the Eighth Amendment, which applies only to persons who are in custody as the result of being convicted of a crime. *See Ingraham v. Wright*, 430 U.S. 651, 664-65 (1977). Newsom's claims of fraud and slander against the Dyersburg Gazette also do not state a federal claim even if they could implicate state law claims of defamation or invasion of privacy. Additionally, Newsom is not entitled to a default judgment against the defendants who did not respond to his complaint, as the record does not show that they were ever served with a summons or the complaint in accordance with Federal Rule of Civil Procedure 4.

Finally, we conclude that the district court did not abuse its discretion when it denied Newsom's motions seeking disqualification of the district court judge. *See United States v. Jamieson*, 427 F.3d 394, 405 (6th Cir. 2005). Recusal was not warranted as a result of the judge's former employment as legal counsel to the former governor

of Tennessee or Newsom's dissatisfaction with the court's rulings. *See EBI-Detroit, Inc. v. City of Detroit*, 279 F. App'x 340, 354 (6th Cir. 2008) (noting that a motion for disqualification must be supported by specific facts showing a personal or extrajudicial bias).

For these reasons, Newsom's pending motions are denied, and the district court's order is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green Clerk

No. 08-6074

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORDER

WILLIE GERALD NEWSOM, Rev. Dr., T.H.D., D.D.,

Plaintiff-Appellant,

v.

STATE OF TENNESSEE; TENNESSEE DEPARTMENT OF HUMAN SERVICES; MARIANNA WILLIAMS; CONNIE SCOTT HAYMON; TELESA TAYLOR; DYERSBURG MANOR NURSING HOME; DYERSBURG STATE GAZETTE / RUSS COMMUNICATIONS, INC.,

Defendants-Appellees,

and

LARRY BLAKEBURN; KIMBERLY CHILDRESS MONTEITH; JONI MCGEHEE; JULIO M. PAGAN,

Defandants.

Upon sua sponte consideration,

It is **ORDERED** that the mandate is hereby recalled.

The petition for en banc rehearing will be tendered and the Court will determine if it should be filed since the original was mailed to the wrong address and bears an incorrect case number.

ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT

s/ Leonard Green, Clerk

Issued: November 20, 2009

No. 08-6074

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORDER

WILLIE GERALD NEWSOM, Rev. Dr., T.H.D., D.D.,

Plaintiff-Appellant,

v.

STATE OF TENNESSEE, ET AL.,

Defendants-Appellees.

and

LARRY BLAKEBURN, ET AL.,

Defendants.

Upon consideration of the appellant's untimely petition for rehearing en banc, It is ORDERED that the petition not be accepted for filing.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green, Clerk

Issued: February 11, 2010